

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA

v.

CHIKOSI LEGINS

Criminal Case No.:
3:19 CR 104

February 11, 2020
VOLUME IV

JURY INSTRUCTIONS EXCERPT TRANSCRIPT OF JURY TRIAL
PROCEEDINGS
BEFORE THE HONORABLE DAVID J. NOVAK
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

Thomas A. Garnett, Esquire
OFFICE OF THE UNITED STATES ATTORNEY
919 East Main Street, Suite 1900
Richmond, Virginia 23219

Kathryn E. Gilbert, Esquire
UNITED STATES DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue NW, 4025 NYA
Washington, DC 20530

Counsel on behalf of the United States

Charles A. Gavin, Esquire
CAWTHORNE DESKEVICH & GAVIN PC
1409 Eastridge Road
Richmond, Virginia 23229

Counsel on behalf of the Defendant

TRACY J. STROH, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

(The following are the jury instructions from
the trial held in this matter:)

* * * * *

THE COURT: I'm going to begin with Instruction
Number 1 with the introduction to the final charge and the
province of the Court and the jury.

Members of the jury, now you have heard all the
evidence that is to be received in this trial, and each of
the arguments of counsel will occur. After that, it
becomes my duty then to give you one final instruction
and -- now to give you the final instructions of the Court
that is applicable to this case. You should use these
instructions to guide you in your decisions. All the
instructions of law given to you by the Court, those given
to you at the beginning of the trial, those given to you
during the trial, and these final instructions must guide
and govern your deliberations. It is your duty as jurors
to follow the law as stated in all the instructions of the
Court and to apply these rules of law to the facts as you
find them to be from the evidence received during the
trial.

Now, counsel -- I will step back and tell you.
We wrote these instructions with the idea I was going to
give the instructions after the argument. So I flipped

1 them, which is a little -- we just moved it around, the
2 order, just because of timing. So you might see me
3 anticipating them arguing, having completed it, but
4 anyhow. In their arguments, counsel may properly refer to
5 some of the applicable rules of law in their closing
6 arguments to you. If, however, any differences appear to
7 you between the law as stated by counsel and that as
8 stated by the Court in these instructions, you, of course,
9 are to be governed by the instructions given to you by me,
10 the Court. You are not to single out any one instruction
11 alone as stating the law, but must consider the
12 instructions as a whole in reaching your decisions.

13 Neither are you to be concerned with the wisdom
14 of any rule of law as stated by the Court. Regardless of
15 any opinion that you may have as to what the law ought to
16 be, it would be a violation of your sworn duty to base any
17 part of your verdict upon any other view or opinion of the
18 law than given in these instructions by me just as it
19 would be a violation of your sworn duty, as the judges of
20 the facts, to base your verdict upon anything but the
21 evidence received in the case.

22 You were chosen as jurors for this trial in
23 order to evaluate all of the evidence received and to
24 decide each of the factual questions presented by the
25 allegations brought by the government in the indictment

1 and the plea of not guilty entered by the defendant. In
2 resolving the issues presented to you for decision in this
3 trial, you must not be persuaded by bias, prejudice or
4 sympathy for or against any of the parties to this case or
5 by any public opinion. Justice, through trial by jury,
6 depends upon the willingness of each individual juror to
7 seek the truth from the same evidence presented to all the
8 jurors here in the courtroom and then to arrive at a
9 verdict by applying the same rules of law as now being
10 given to each of you in these instructions of the Court.

11 Let's talk about judging the evidence. There is
12 nothing particularly different in the way that a juror
13 should consider the evidence in a trial from that in which
14 any reasonable and careful person would deal with any very
15 important question that must be resolved by examining
16 facts, opinions, and evidence. You are expected to use
17 your good sense in considering and evaluating the evidence
18 in the case. Use the evidence for only those purposes for
19 which it has been received and given the evidence -- and
20 give the evidence a reasonable and fair construction in
21 the light of your common knowledge of the natural
22 tendencies and inclinations of human beings.

23 If the defendant is proven guilty beyond a
24 reasonable doubt, you must say so. If not proved guilty
25 beyond a reasonable doubt, then you must say so. Keep

1 constantly in mind that it would be a violation of your
2 sworn duty to base a verdict upon anything other than the
3 evidence received in the case and the instructions of the
4 Court. Remember as well that the law never imposes upon a
5 defendant in a criminal case their burden or duty of
6 calling any witnesses or producing any evidence because
7 the burden of proving guilt beyond a reasonable doubt
8 always rests with the government.

9 I'm going to turn to Instruction Number 3
10 regarding the evidence received in this case. It includes
11 stipulations, judicial notice, and inferences permitted.
12 The evidence in this case consists of the sworn testimony
13 of the witnesses, regardless of who may have called them,
14 all exhibits received in evidence, regardless of who may
15 have produced them, and all facts which may have been
16 argued to or stipulated, and all facts and events which
17 may have been judicially noticed. I haven't noticed
18 anything, but I'm telling you that.

19 When the attorneys on both sides stipulate or
20 agree as to the existence of a fact, you should accept the
21 stipulation as evidence, and you should regard that fact
22 as proven. And that's occurred, as you know, a number of
23 times throughout this trial, and we will give you those
24 stipulations.

25 The instructions say the Court has taken

1 judicial notice of certain facts or evidence. I haven't
2 really taken any notice here, but if I had, when I declare
3 such notice, you then accept my declaration as true. But,
4 again, that's not -- it hasn't occurred here.

5 Any proposed testimony or proposed exhibit to
6 which an objection was sustained by the Court and any
7 testimony or exhibit ordered stricken by the Court must be
8 entirely disregarded. And that happened a couple times
9 where I said to strike the testimony. You've got to
10 ignore that.

11 Anything that you may have seen or heard outside
12 the courtroom is not evidence and must be entirely
13 disregarded.

14 Questions, objections, statements and arguments
15 of counsel are not evidence in the case unless made as an
16 admission or stipulation of fact.

17 You are to base your verdict only on the
18 evidence received in the case. In your consideration of
19 the evidence received, however, you are not limited to the
20 bald statements of the witnesses or to the bald assertions
21 in the exhibits. In other words, you're not limited
22 solely to what you see and hear as the witnesses testify
23 or as the exhibits are admitted. You're permitted to draw
24 from the facts which you have found to be proved such
25 reasonable inferences as you feel were justified in the

1 light of your experience and common sense.

2 Let's talk about direct and circumstantial
3 evidence. I talked a little bit about this in the opening
4 instructions, but I'm going to go over it again. There
5 are two types of evidence which are generally presented
6 during a trial, direct evidence and circumstantial
7 evidence. Direct evidence is the testimony of a person
8 who asserts or claims to have actual knowledge of a fact,
9 such as an eyewitness who says I saw that. That's the
10 direct evidence. Circumstantial evidence is the proof of
11 a chain of facts and circumstances indicating the
12 existence of a fact. The law makes no distinction between
13 the weight or value to be given to either direct or
14 circumstantial evidence. Nor is a greater degree of
15 certainty required of circumstantial evidence than of
16 direct evidence. You should weigh all the evidence in the
17 case.

18 Let me talk to you about inferences. Inferences
19 are simply deductions or conclusions which reason and
20 common sense lead the jury to draw from the evidence
21 received in the case.

22 Let me talk about the power of your
23 recollection. If any reference by the Court or by counsel
24 to matters of testimony or exhibits does not coincide with
25 your own recollection of that evidence, it is your

1 recollection which should control during deliberations and
2 not the statements of the Court or of counsel. You alone
3 are the sole judges of the evidence received in this case.

4 Let me talk to you about questions that were not
5 in evidence. The questions, as I said before, asked by a
6 lawyer for either party to this case are not evidence. If
7 a lawyer asks a question of a witness which contains an
8 assertion of a fact, therefore, you may not consider the
9 assertion by the lawyer as any evidence of that fact.

10 Only the answers are the evidence.

11 Let's talk about the separate counts that are
12 charged. A separate crime is charged in each count of the
13 indictment. Each charge, and the evidence pertaining to
14 it, should be considered separately by the jury. The fact
15 that you may find the defendant guilty or not guilty as to
16 one of the counts should not control your verdict as to
17 any other one of the charges that are set forth.

18 Let me talk to you about the burden of proof and
19 reasonable doubt. I instruct you that you must presume
20 the defendant to be innocent of the crimes charged. Thus,
21 the defendant, although accused of crimes in the
22 indictment, begins the trial with a clean slate, so to
23 speak, which means with no evidence -- with no evidence
24 against him. The indictment, as you already know, is not
25 evidence of any kind. The law permits nothing but legal

1 evidence presented before the jury and Court to be
2 considered in support of any charge against a defendant.
3 The presumption of innocence alone, therefore, is
4 sufficient to acquit a defendant unless the jurors are
5 satisfied beyond a reasonable doubt of the defendant's
6 guilt after careful and impartial consideration of all the
7 evidence in the case.

8 It is not required that the government prove
9 guilt beyond all possible doubt. The test is one simply
10 of reasonable doubt. The jury will remember that a
11 defendant is never to be convicted on mere suspicion or
12 conjecture. The burden of proof is upon the prosecution
13 to prove guilt beyond a reasonable doubt. This burden
14 never shifts to a defendant for the law never imposes upon
15 a defendant in a criminal case the burden or duty of
16 calling any witnesses or producing any evidence.

17 So if the jury, after careful and impartial
18 consideration of all the evidence in the case, has a
19 reasonable doubt that the defendant is guilty of the
20 charge, then the jury must acquit.

21 Objections and rulings. Testimony and exhibits
22 can be admitted into evidence during a trial only if they
23 meet certain criteria or standards. It's the sworn duty
24 of the attorney on each side of a case to object when the
25 other side offers testimony or any exhibit which that

1 attorney believes is not properly admissible under the
2 rules of law. Only by raising an objection can a lawyer
3 request and obtain a ruling from the Court on the
4 admissibility of the evidence being offered by the other
5 side. You should not be influenced against an attorney or
6 his client because the attorney has made objections.

7 Do not attempt, moreover, to interpret my
8 rulings on objections as somehow indicating how I think
9 you should decide this case. I simply make a ruling on a
10 legal question regarding the particular piece of testimony
11 or exhibit. And that's true even I've chastised one of
12 the lawyers who, in their zeal to do something, I might
13 have said knock it off, basically, right. You don't hold
14 that against any of the lawyers. That's just me telling
15 them to keep the case moving forward.

16 Let's go to the indictment is not evidence. An
17 indictment is only a formal method used by the government
18 to accuse a defendant of a crime. It is not evidence of
19 any kind against the defendant. The defendant is presumed
20 to be innocent of the crime charged. Even though this
21 indictment has been returned against the defendant, the
22 defendant begins this trial with absolutely no evidence
23 against him.

24 The defendant has pled not guilty to this
25 indictment, and therefore, he denies that he is guilty of

1 the charges.

2 Let me explain to you the term "on or about"
3 that's set forth in the indictment. The indictment
4 charges that the offenses alleged in the indictment were
5 committed on or about a certain date. Although it is
6 necessary for the government to prove beyond a reasonable
7 doubt that the offense -- beyond a reasonable doubt that
8 the offenses were committed on a date reasonably near the
9 date alleged in the indictment, it is not necessary for
10 the government to prove that the offense was committed
11 precisely on the date that was charged. We're going to
12 give you a copy of the indictment, too, as well.

13 Let me talk to you about credibility of
14 witnesses generally. You, as jurors, are the sole and
15 exclusive judges of the credibility of each of the
16 witnesses called to testify in this case, and only you may
17 determine the importance or the weight, if any, that their
18 testimony deserves. After making your assessment
19 concerning the credibility of a witness, you may decide to
20 believe all that witness' testimony, only a portion of it,
21 or none of it.

22 In making your assessment of that witness, you
23 should carefully scrutinize all the testimony given by
24 that witness, the circumstances under which each witness
25 has testified, and all the other evidence which tends to

1 show whether a witness, in your opinion, is worthy of
2 belief. Consider each witness' intelligence, their motive
3 to testify, their state of mind, and appearance and manner
4 while on the witness stand. Consider the witness' ability
5 to observe the matters as to which he or she has testified
6 and consider whether he or she impresses you as having an
7 accurate memory on recollection of these matters.

8 Consider also any relation that a witness may bear to
9 either side of the case, the manner in each -- the manner
10 in which each witness might be affected by your verdict,
11 and the extent to which, if at all, each witness is either
12 supported or contradicted by other evidence in the case.

13 Inconsistencies or discrepancies in the
14 testimony of a witness or between the testimonies of
15 different witnesses may or may not cause you to believe or
16 discredit such testimony. Two or more persons witnessing
17 an incident or a transaction may simply see or hear it
18 differently. Innocent misrecollection, like a failure of
19 recollection, is not an uncommon human experience. And in
20 weighing the effect of a discrepancy, however, always
21 consider whether it pertains to a matter of importance or
22 an insignificant detail and consider whether the
23 discrepancy results from innocent error or from
24 intentional falsehood.

25 After making your own judgment or assessment

1 concerning the believability of a witness, you can then
2 attach such importance or weight to that testimony, if
3 any, that you feel it deserves. You will then be in a
4 position to decide whether the government has proven the
5 charges beyond a reasonable doubt.

6 Let me talk to you about impeachment by prior
7 conviction, Instruction Number 14. You may consider
8 evidence that a witness was convicted of a crime only in
9 deciding the believability of his testimony. You may not
10 consider it for any other purpose.

11 Let me talk to you about the number of
12 witnesses. Do not make any decisions simply by counting
13 the number of witnesses who testified about a certain
14 point. You may find that the testimony of one witness or
15 a few witnesses is more persuasive than the testimony of a
16 larger number. You need not accept the testimony of the
17 larger number of witnesses. What is important, however,
18 is how truthful and how accurate the witnesses were and
19 how much weight you think each of their testimony
20 deserves.

21 Instruction Number 16, credibility of the
22 witnesses, inconsistent statement. You have heard
23 evidence that before the trial, a witness may have made a
24 statement that may be inconsistent with their testimony
25 here in court. You may consider an inconsistent statement

1 made before the trial only to help you decide how
2 believable a witness' testimony was here in court. If an
3 earlier statement was made under oath, you can also
4 consider the earlier statement as evidence of the truth of
5 whatever the witness said in the earlier statement.

6 Instruction Number 17 was intentionally omitted
7 because it doesn't apply to this case. So just ignore
8 that.

9 Instruction Number 18, effect of the defendant's
10 failure to testify. The defendant in a criminal case has
11 an absolute right under our Constitution not to testify.
12 The fact that the defendant did not testify must not be
13 discussed or considered in any way when deliberating and
14 in arriving at your verdict. No inference of any kind may
15 be drawn from the fact that a defendant decided to
16 exercise his privilege that is granted under the
17 Constitution and he did not testify. As stated before,
18 the law never imposes upon a defendant in a criminal case
19 the burden or duty of calling any witnesses or of
20 producing any evidence.

21 Let's talk about opinion evidence. We had a
22 number of expert witnesses, and I told you at some point I
23 would give you some further instructions. Well, now is
24 the time for that. The rules of evidence ordinarily do
25 not permit witnesses to testify as to their own opinion or

1 to their own conclusions about important questions in a
2 trial. An exception to this rule exists as to those
3 witnesses who are described as expert witnesses. An
4 expert witness is someone who, by education or by
5 experience, may have become knowledgeable in some
6 technical, scientific, or very specialized area. If such
7 knowledge or experience may be of assistance to you in
8 understanding some of the evidence or in determining a
9 fact, an expert witness in that area may state an opinion
10 as to a matter in which he or she claims to be an expert.

11 You should consider each expert opinion received
12 in evidence in this case and give it such weight as you
13 may think it deserves. You should consider the testimony
14 of expert witnesses just as you should consider other
15 evidence in this case. You should decide that the opinion
16 of an expert witness is not decided -- is not based -- I'm
17 sorry. If you should decide that the opinion of an expert
18 witness is not based upon sufficient education or
19 experience, or if you should conclude that the reasons
20 given in support of the opinion are not sound, or if you
21 should conclude that the opinion is outweighed by other
22 evidence, you may then disregard the opinion in part or in
23 its entirety. As I have told you several times, you, the
24 jury, are the sole judges of the facts of this case.

25 I'm going to define for you now the term

1 "knowingly." The term "knowingly," as used in the
2 indictment and in these instructions to describe the
3 alleged state of mind of the defendant, means that he was
4 conscious and aware of his actions, realized what he was
5 doing or what was happening around him, and did not act
6 because of ignorance, mistake, or accident.

7 I'm going to talk to you about a term of
8 evidence called Rule 404(b) evidence. Evidence that an
9 act was done or that an offense was committed by the
10 defendant at some other time is not, of course, any
11 evidence or proof whatever that at another time the
12 defendant performed a similar act or committed a similar
13 offense, including the offenses charged in this
14 indictment.

15 Evidence of a similar act or offense may not be
16 considered by the jury in determining whether the
17 defendant actually performed the physical acts charged in
18 this indictment. Nor may such evidence be considered for
19 any other purpose whatever unless the jury first finds
20 beyond a reasonable doubt from other evidence in the case,
21 standing alone, that the defendant physically did the acts
22 charged in the indictment.

23 If the jury should find beyond a reasonable
24 doubt from other evidence in the case that the defendant
25 did the acts or acts alleged in the particular count under

1 consideration, the jury may then consider evidence as to
2 an alleged earlier act of a like manner in determining the
3 state of mind or intent with which the defendant acted or
4 actually did the act or acts charged in the particular
5 count.

6 The defendant is not on trial for any acts or
7 crimes not alleged in the indictment. Nor may a defendant
8 be convicted of the crimes charged if you were to find he
9 committed other crimes, even crimes similar to ones
10 charged in this indictment.

11 Now I'm going to start giving you the specific
12 instructions pertaining to the individual charges that are
13 set forth in the indictment, beginning with Count One,
14 which alleges deprivation of rights under color of law.
15 The indictment charges in Count One that on or about
16 May 10th of 2018, in the Eastern District of Virginia, the
17 defendant, Chikosi Legins, while acting under color of
18 law, used his penis to penetrate B.L., Brandon Lemagne's
19 mouth and anus against B.L.'s will, thereby willfully
20 depriving B.L. of the right, secured and protected by the
21 Constitution and laws of the United States, not to be
22 subjected to cruel and unusual punishment. This act
23 included aggravated sexual abuse and attempted aggravated
24 sexual abuse and resulted in bodily injury to B.L., in
25 violation of Title 18, United States Code, Section 242.

1 Now I'm going to go through defining the
2 different aspects of that. The statute, Section 242 of
3 Title 18 of the United States Code provides, in part, that
4 whoever, under color of any law, willfully subjects any
5 person in any state to the deprivation of any rights,
6 secured or protected by the Constitution or the laws of
7 the United States, shall be guilty of an offense against
8 the United States.

9 Let me talk to you by elements. You heard me
10 reference elements before. It's the different parts of
11 what the government has to prove for each of the offenses.
12 The elements of the offense for Count One regarding
13 deprivation of rights under color of law. In order to
14 sustain its burden of proof for the crime charged in
15 Count One of the indictment, the government must prove the
16 following essential elements beyond a reasonable doubt:

17 First, that the defendant deprived B.L. of a
18 right which is secured or protected by the Constitution or
19 laws of the United States;

20 Second, the defendant acted under color of law
21 when depriving B.L. of a constitutional right; and

22 Third, the defendant acted willfully to deprive
23 B.L. of such rights -- such right.

24 I will now instruct you on the meaning of each
25 of these three elements. The first element of the offense

1 charged pertains to the deprivation of rights. The first
2 element the government must prove is that the conduct of
3 the defendant deprived B.L. of a right secured and
4 protected by the Constitution or the laws of the
5 United States.

6 The indictment charges that the defendant
7 deprived B.L. of the right not to be subjected to cruel
8 and unusual punishment and that he did so by using his
9 penis to penetrate B.L.'s mouth and anus against B.L.'s
10 will. The Court instructs you that the right to be free
11 from cruel and unusual punishment is a right secured and
12 protected by the Constitution and the laws of the
13 United States.

14 Sexual abuse of a prison inmate by a
15 correctional officer is cruel and unusual punishment, and
16 therefore violates the Constitution. Sexual abuse
17 includes engaging in a sexual act with an inmate without
18 the inmate's consent. To determine whether this element
19 has been proved, you must determine if the defendant
20 committed the sexual acts described in Count One of the
21 indictment, and if so, you must determine if he acted
22 without the inmate's consent. The United States bears the
23 burden of proving a lack of consent. It is not the
24 defendant's burden to prove the existence of consent.

25 So first, you must determine if the defendant

1 penetrated B.L.'s mouth or anus with his penis, however
2 slightly. You need not find that the defendant penetrated
3 both the mouth and anus of B.L. Rather, you need only
4 find that he penetrated either B.L.'s mouth or B.L.'s
5 anus. If you determine that the defendant engaged in this
6 conduct, you must then determine whether he did so without
7 B.L.'s consent.

8 In determining whether or not B.L. consented to
9 the sexual act, you may consider all evidence relating to
10 the context in which the alleged act occurred, including,
11 among other things, whether the defendant used physical
12 force, the kind of relationship that existed between the
13 defendant and B.L., including the extent to which the
14 defendant had power over B.L.; any disparity in size
15 between the defendant and B.L., anything that the
16 defendant said or did before, during, or after the sexual
17 act, including whether the defendant gave any verbal
18 commands; and any comments that B.L. made before, during,
19 or after the sexual act.

20 If you find that B.L. agreed to a sexual act but
21 did so because of threats, coercion, or duress, then B.L.
22 did not consent to the sexual act.

23 Instruction Number 26, the second element of the
24 offense charged in Count One, which is under color of law.
25 The second element that the government must prove is that

1 the defendant acted under color of law. The phrase "under
2 color of any law" means the real or purported use of
3 authority provided by law. A person acts under color of
4 any law when that person acts in his official capacity or
5 claims to act in his official capacity.

6 Acts committed under color of any law include
7 not only the actions of federal officials within the
8 limits of their lawful authority, but also the actions of
9 federal officials who exceed the limits of their lawful
10 authority while purporting or claiming to act in
11 performance of their official duties. In other words,
12 color of law includes misuse of lawful authority.

13 If you find that the defendant was a
14 correctional officer with the Bureau of Prisons and that
15 he acted or gave the appearance of acting as a
16 correctional officer at the time of the charged incident,
17 then you may find that he acted under color of law.

18 The third element of the offense charged
19 pertains to willfulness. The third element the government
20 must prove is that the defendant acted willfully. A
21 person acts willfully if he acts voluntarily and
22 intentionally with the specific intent to do something
23 that the law forbids. In this case, the government must
24 prove that the defendant intended to deprive B.L. of the
25 right to be free from cruel and unusual punishment, which

1 includes the right to be free from sexual abuse by a
2 corrections officer.

3 Although the government must prove beyond a
4 reasonable doubt that the defendant voluntarily and
5 deliberately did an act that deprived the person
6 identified in the indictment of a right guaranteed and
7 protected by the Constitution, it is not necessary for the
8 government to prove that the defendant knew that this
9 action would actually violate anybody's constitutional
10 rights. You must, however, find that the defendant acted
11 with the bad purpose of doing what the Constitution
12 forbids.

13 Willfulness may be proved through circumstantial
14 evidence. You may infer the defendant's state of mind
15 from all the surrounding circumstances. In determining
16 whether the defendant acted willfully, you may consider
17 any facts or circumstances you deem relevant, including
18 what the defendant said, what the defendant did or failed
19 to do, how the defendant acted and whether the defendant
20 knew, through policies, training, or experience, that his
21 actions were unlawful. If you find that the government
22 has proved -- I'm sorry. If you find that the government
23 has proved these three elements beyond a reasonable doubt,
24 then you should find the defendant guilty of Count One.
25 If, however, you find that the government has not met its

1 burden to prove all three elements beyond a reasonable
2 doubt, then you should find the defendant not guilty of
3 Count One.

4 I'm going to define for you bodily injury and
5 aggravated sexual abuse and attempted aggravated sexual
6 abuse as alleged in Count One. If you find the defendant
7 guilty as charged in Count One of the indictment, you must
8 then additionally determine whether the government has
9 proved that the defendant's acts as charged in Count One
10 resulted in bodily injury to B.L. and/or included sexual
11 aggravated sexual abuse or attempted aggravated sexual
12 abuse. The additional two findings should be considered
13 separately. If you find the defendant not guilty as
14 charged in Count One of the indictment, however, you need
15 not consider questions 1a and 1b on the verdict form.
16 I'll go over that at the end. You'll have the verdict
17 form. It's attached to your instructions.

18 The term "bodily injury" includes any of the
19 following: A cut, abrasion, bruise, burn, or
20 disfigurement; physical pain; illness; impairment of the
21 function of a bodily member, organ, or mental faculty; or
22 any other injury to the body, no matter how temporary.
23 Physical pain, no matter how fleeting, satisfies this
24 element.

25 The term "aggravated sexual abuse" means

1 knowingly causing another person to engage in a sexual act
2 by using force against that person.

3 The term "knowingly" means that the defendant
4 was conscious and aware of his action, realized what he
5 was doing or what was happening around him, and did not
6 act because of ignorance, mistake, or accident.

7 The term "force" includes physical force
8 sufficient to overcome, restrain, or injure another.

9 The term "sexual act" means penetration, however
10 slight, of the anus by the penis, or contact between the
11 mouth and the penis.

12 If you find from consideration of the evidence
13 that the defendant's acts resulted in bodily injury to
14 B.L., then you may check the corresponding box for "yes"
15 on the verdict form.

16 If you find from your consideration of all the
17 evidence that the defendant's acts included attempted
18 aggravated sexual abuse, then you may check the
19 corresponding box for "yes" on the verdict form.

20 If you find from your consideration of all the
21 evidence that the defendant's acts included aggravated
22 sexual abuse, then you may check the corresponding box for
23 "yes" on the verdict form.

24 If, on the other hand, you find from your
25 consideration of all the evidence that the defendant's

1 acts did not result in bodily injury to B.L., then you
2 should check the corresponding box for "no" on the verdict
3 form. You will find -- if you find from your
4 consideration of all the evidence that the defendant's
5 acts did not include aggravated sexual abuse or attempted
6 aggravated sexual abuse, then you should check the
7 corresponding box for "no" on the verdict form. You'll
8 see how it just goes down from one step to the other on
9 the verdict form.

10 Let me give you the offense instruction for
11 Count Two, aggravated sexual abuse. Count Two of the
12 indictment charges that on or about on May 10th of 2018,
13 in the Eastern District of Virginia, the defendant,
14 Chikosi Legins, while in a federal prison, knowingly
15 caused B.L. -- again, Brandon Lemagne -- to engage in a
16 sexual act by using force against B.L. and attempted to do
17 so; specifically, the defendant, Chikosi Legins, pushed,
18 hit, restrained, and overcame B.L., and the defendant used
19 his penis to penetrate B.L.'s mouth and anus, in violation
20 of Title 18, United States Code, Section 2241(a).

21 Now I'm going to define that offense, aggravated
22 sexual abuse. Section 2241(a) of Title 18 of the
23 United States Code provides, in pertinent parts, that
24 whoever, in a federal prison, knowingly causes another
25 person to engage in a sexual act by using force against

1 the other person, or attempts to do so, shall be guilty of
2 an offense against the United States.

3 The elements of the offense for Count Two,
4 aggravated sexual abuse, are going to be described now.
5 Count Two of the indictment charges the defendant with
6 aggravated sexual abuse and attempted aggravated sexual
7 abuse, as I said, in violation of Title 18 -- I'm sorry --
8 in violation of Section 2241(a) of Title 18 of the
9 United States Code. In order to sustain its burden of
10 proof for the crime of aggravated sexual abuse and
11 attempted aggravated sexual abuse as charged in Count Two
12 of the indictment, the government must prove the following
13 two essential elements beyond a reasonable doubt:

14 First, that the defendant knowingly caused B.L.
15 to engage in a sexual act by using force against B.L. or
16 attempted to knowingly engage in a sexual act with B.L. by
17 using force against B.L.; and

18 Second, that the offense was committed at a
19 federal prison.

20 The term "knowingly" means that the defendant
21 was conscious and aware of his action, realized what he
22 was doing or what was happening around him, and did not
23 act because of ignorance, mistake, or accident.

24 The term "force" includes physical force
25 sufficient to overcome, restrain, or injure another.

1 Here, the indictment alleges that the defendant used force
2 by pushing, hitting, restraining, or overcoming B.L.

3 The term "sexual act" means penetration, however
4 slight, of the anus by the penis, or contact between the
5 mouth and the penis. Here, the indictment alleges that
6 the sex act committed by the defendant was to penetrate
7 B.L.'s mouth or anus with his penis. If you find that the
8 defendant pushed, hit, restrained, or overcame B.L. to
9 penetrate B.L.'s mouth or anus with the defendant's penis,
10 or if you find even that the defendant attempted to do so,
11 you may find that the first element has been met.

12 Now let me instruct you as to Counts Three and
13 Four, which alleges sexual abuse of a ward. Count Three
14 of the indictment charges that on or about May 10th of
15 2018, in the Eastern District of Virginia, the defendant,
16 Chikosi Legins, while in a federal prison, knowingly
17 engaged in a sexual act and attempted to do so with B.L.,
18 a person who was in official detention and under the
19 custodial, supervisory, and disciplinary authority of the
20 defendant; specifically Corrections Officer Chikosi Legins
21 used his penis to penetrate inmate B.L.'s mouth and anus
22 while in the Federal Correctional Institution in
23 Petersburg, in violation of Title 18, United States Code,
24 Section 2243(b).

25 Count Four charges the same offense. It alleges

1 that on a different date, though, March 16th of 2018, in
2 the Eastern District of Virginia, the defendant, Chikosi
3 Legins, while in a federal prison, knowingly engaged in a
4 sexual act and attempted to do so with B.L., a person who
5 was in official detention and under the custodial,
6 supervisory, and disciplinary authority of the defendant;
7 specifically, Corrections Officer Chikosi Legins used his
8 penis to penetrate inmate B.L.'s mouth while in the
9 Federal Correctional Institution in Petersburg, in
10 violation of Title 18, United States Code, Section
11 2243(b).

12 I'm going to define for you this offense, which
13 is different than the earlier offenses. Section 2243(b)
14 of Title 18 of the United States Code provides, in part,
15 that, whoever, in a federal prison, knowingly engages in a
16 sexual act with another person who is, (1), in official
17 detention; and (2), under the custodial, supervisory, or
18 disciplinary authority of the person so engaging, or
19 attempts to do so, shall be guilty of an offense against
20 the United States.

21 Now I'm going to provide for the elephant -- I'm
22 sorry. The elements -- I'm getting tired here. The
23 elements of the two offenses -- they're the same -- as
24 alleged in Counts Three and Four.

25 Counts Three and Four of the indictment charge

1 the defendant with sexual abuse of a ward and attempted
2 sexual abuse of a ward. In order to sustain its burden of
3 proof for the crime of sexual abuse of a ward, and
4 attempted sexual abuse of a ward as charged in Counts
5 Three and Four of the indictment, the government must
6 prove the following three essential elements beyond a
7 reasonable doubt:

8 One, that the defendant engaged in a sexual act
9 with B.L., or attempted to engage in a sexual act with
10 B.L.;

11 Second, at the time, B.L. was in official
12 detention at the Federal Correctional Institution at
13 Petersburg; and

14 Third, at the time, B.L. was under the
15 custodial, supervisory, or disciplinary authority of the
16 defendant.

17 The term "knowingly" means that the defendant
18 was conscious and aware of his action, realized what he
19 was doing or what was happening around him, and did not
20 act out of ignorance, mistake, or accident.

21 The term "sexual act" means penetration, however
22 slight, of the anus by the penis; contact between the
23 mouth and the penis, or the mouth and the anus; and the
24 penetration, however slight, of the anal or genital
25 opening of another by a hand or finger or by any object,

1 with an intent to abuse, humiliate, harass, degrade, or
2 arouse or gratify the sexual desire of any person.

3 The term "official detention" means detention by
4 a federal officer, or employee or under the direction of a
5 federal officer or employee, following a charge or
6 conviction of an offense.

7 If you find that on or about May 10th, 2018,
8 while B.L. was officially detained at the Federal
9 Correctional Institution at Petersburg and under the
10 defendant's authority, the defendant used his penis to
11 penetrate B.L.'s mouth or anus, or attempted to do so, you
12 may find him guilty of the offense charged in Count Three.

13 If you find that on or about March 16th of 2018, while
14 B.L. was officially detained at the Federal Correctional
15 Institution in Petersburg, that the defendant used his
16 penis to penetrate B.L.'s mouth, or attempted to do so,
17 you may find him guilty of the offense charged in Count
18 Four.

19 I'm going to turn to Instruction 35, defining
20 the offense instruction -- defining the offense alleged in
21 Count Five, which is false statements to a federal
22 officer. Count Five of the indictment charges as follows:
23 That on or about June the 5th of 2018, in the Eastern
24 District of Virginia, the defendant, Chikosi Legins,
25 knowingly and willfully made false, fictitious, and

1 fraudulent statements and representations to special
2 agents of the Federal Bureau of Investigation, the FBI;
3 and Department of Justice, DOJ; Office of the Inspector
4 General as to material facts in relation to a matter
5 within the justification of the FBI and the DOJ, agencies
6 of the United States. Specifically, the defendant,
7 Chikosi Legins: (1) -- there's two alleged false
8 statements. (1) falsely denied that he engaged in a
9 sexual act with any inmate at any time at the Federal
10 Correctional Institution in Petersburg; and (2) falsely
11 stated that on May the 10th of 2018, he attempted to use a
12 computer and a printer while he was engaged in, quote,
13 just conversation, unquote, with inmate B.L. when they
14 were alone in an unattended office with no surveillance
15 cameras. Those statements and representations by Chikosi
16 Legins were false, because as Chikosi Legins then well
17 knew, he had engaged in a sexual act with an inmate at the
18 Federal Correctional Institution in Petersburg; and on May
19 the 10th of 2018, the defendant used an unattended office
20 with no surveillance cameras to engage in a sexual act
21 with B.L., in violation of Title 18, United States Code,
22 Section 1001.

23 Now I want to define for you the Statute 1001.
24 Section 1001(a)(2) of Title 18 of the United States Code
25 provides, in part, that whoever, in any matter within the

1 jurisdiction of the executive, legislative, or judicial
2 branches of the government of the United States knowingly
3 and willfully makes any materially false, fictitious or
4 fraudulent statements or representation shall be guilty of
5 an offense against the United States.

6 Now I'm going to go over the elements of this
7 offense, of false statements. In order to sustain its
8 burden of proof for the crime of knowingly and willfully
9 making a false statement to the United States government
10 as charged in Count Five of the indictment, the government
11 must prove the following four essential elements beyond a
12 reasonable doubt:

13 First, that the defendant made a false,
14 fictitious, or fraudulent statement or representation to
15 the government as detailed in Count Five of the
16 indictment. That's one of those two statements.

17 Two, in making the false, fictitious, or
18 fraudulent statement, the defendant acted willfully,
19 knowing that the statement was false.

20 Third, the statement was made in a matter within
21 the jurisdiction of the executive branch of the government
22 of the United States.

23 And last, the statement made by the defendant
24 was material to the Federal Bureau of Investigation and/or
25 the Office of the Inspector General.

1 This count alleges a number -- specifically
2 two -- false or fraudulent statements. The government is
3 not required to prove that all the statements alleged in
4 Count Five of the indictment as false are, in fact, false.
5 Each juror, however, must agree with each of other jurors
6 that the same false, fictitious, or fraudulent statement
7 or representation alleged in Count Five is, in fact,
8 false, fictitious, or fraudulent. In other words, they
9 allege two statements. They don't have to prove them
10 both. They only need to prove one. They might prove
11 both. That's up to you to decide. But what you do have
12 to agree on, if you were to find that the government
13 proved this count beyond a reasonable doubt, you have to
14 agree as to which statement, or both, that the defendant
15 made. Do you understand that?

16 The jury need not unanimously agree on each such
17 statement alleged, but in order to convict, you must
18 unanimously agree upon at least one such statement as
19 false, fictitious, or fraudulent when knowingly made or
20 used by the defendant, and then the jury must indicate on
21 a special verdict form which statement, or statements, it
22 found to be false, fictitious, or fraudulent.

23 Unless the government has proven the same false
24 or fraudulent statement to each of you beyond a reasonable
25 doubt, you must acquit the defendant of the charge in

1 Count Five of this indictment. In other words, you have
2 to agree as to each statement, that the government has met
3 their burden of proof beyond a reasonable doubt for you to
4 identify that statement to support the offense. Of
5 course, you could find it as to both if you so decide.

6 Let me turn to Instruction Number 38,
7 definitions for the offense charged in Count Five, false
8 statements. A false or fictitious statement or
9 representation is an assertion which is untrue when made
10 or when used and which is known by the person making it or
11 using it to be untrue. A fraudulent statement or
12 representation is an assertion which is known to be untrue
13 and which is made or used with the intent to deceive.

14 A material statement is one that has the natural
15 tendency to influence a governmental action or is capable
16 of influencing a governmental action. It is not necessary
17 for the United States to prove that the statements here
18 charged actually did influence a governmental action.

19 A person acts willfully, as that term is used in
20 Count Five, when that person acts deliberately,
21 voluntarily, and intentionally and with the knowledge that
22 the conduct is unlawful. A person who makes, submits, or
23 uses a statement or writing which that person believes to
24 be truthful does not knowingly make, submit, or use a
25 false, fictitious, or fraudulent statement.

1 A matter is, quote, within the jurisdiction of
2 the executive branch of the United States Government,
3 unquote, if the FBI and/or the Department of Justice,
4 Office of the Inspector General has the power to exercise
5 authority in that matter. It is not necessary, however,
6 that the government prove that the defendant knew that the
7 matter was within the jurisdiction of the United States
8 government.

9 Let me define for you the word attempt as I've
10 used. In Counts Two, Three and Four of the indictment,
11 the defendant is charged with committing offenses or
12 attempting to commit crimes. In order to sustain its
13 burden of proof for these counts, the government must
14 prove either that the defendant committed these crimes or
15 that he attempted to commit these crimes. To prove that
16 the defendant attempted to commit these crimes, the
17 government must prove the following two essential elements
18 beyond a reasonable doubt as to each count:

19 First, the defendant intended to commit the
20 crime described in the count; and

21 Second, thereafter, the defendant did an act
22 constituting a substantial step towards the commission of
23 the crime.

24 A defendant may be found guilty of attempting to
25 commit a federal crime even though no one actually did all

1 the acts necessary in order to commit the crime. A
2 defendant may not be found guilty of attempting to commit
3 any crime, however, merely by thinking about it or even by
4 making some plans or some preparation for the commission
5 of a crime.

6 The difference between conduct which violates
7 the law and conduct which does not violate the law in this
8 regard is what is referred to as taking a substantial step
9 towards the commission of a crime. In determining whether
10 or not the defendant took a substantial step towards the
11 commission of a crime, you must consider all the evidence
12 admitted in the case concerning that defendant and the
13 alleged commission of that crime.

14 In order to find the defendant guilty of
15 committing the crime of attempted aggravated sexual abuse,
16 as in Count Two, or the crime of attempted sexual abuse of
17 a ward, as set forth in Counts Three and Four, the
18 government must prove beyond a reasonable doubt that the
19 mental processes of the defendant passed from the stage of
20 just thinking about the crime to actually intending to
21 commit that crime and that the physical process of the
22 defendant went beyond and passed from the stage of mere
23 preparation to, instead, some firm, clear, and undeniable
24 action to accomplish that intent.

25 Instruction 40. This is kind of the rules of

1 the road as to what you do, and I'm going to give this
2 instruction to you again after the closing arguments just
3 so you know exactly how to do your job.

4 Upon retiring to the jury room to begin your
5 deliberations, you must first elect one of your number --
6 one of your members to act as your foreperson. The
7 foreperson will preside over your deliberations and will
8 be your spokesperson here in court.

9 Your verdict must represent the collective
10 judgment of the jury. In order to return a verdict, it is
11 necessary that each juror must agree to it. Your verdict,
12 in other words, must be unanimous.

13 It is your duty as jurors to consult with one
14 another and to deliberate with one another with a view
15 towards reaching an agreement if you can do so without
16 violence to your individual judgment. Each of you must
17 decide the case for yourself, but do so only after an
18 impartial consideration of the evidence in the case with
19 your fellow jurors. And that will occur during
20 deliberations only. In the course of your deliberations,
21 do not hesitate to reexamine your own views and to change
22 your opinion if convinced it is erroneous. Do not
23 surrender your honest convictions, however, solely because
24 of the opinion of your fellow jurors or for the mere
25 purpose of thereby being able to return a unanimous

1 verdict.

2 Remember at all times that you are not
3 partisans. You are judges, judges of the facts of this
4 case. Your sole interest here is to seek the truth from
5 the evidence as received during the trial.

6 Your verdict must be based solely upon the
7 evidence received in this case. Nothing you have seen or
8 read outside the court may be considered. That's why I
9 asked you every morning about that, right. Nothing that I
10 have said or done during the course of this trial is
11 intended in any way to somehow suggest to you what I think
12 your verdict ought to be. Nothing said in these
13 instructions and nothing in any form in the verdict, which
14 has been prepared for your convenience, is to suggest or
15 convey to you in any way or manner or any intimation as to
16 what verdict I think you should return. What the verdict
17 shall be is the exclusive duty and responsibility of you
18 all as the jurors in this case. As I have told you many
19 times, you are the sole judges of the facts.

20 Now, the punishment provided by law for the
21 offenses charged in the indictment is a matter exclusively
22 within the province of the Court and should never be
23 considered by the jury in any way in arriving at any
24 impartial verdict as to the offenses charged. In other
25 words, punishment is my job. You're not to consider that

1 as to whether or not somebody is guilty or not guilty of a
2 crime.

3 Now, a form for the verdicts has been prepared
4 for your convenience. That's attached. And I'll be
5 giving you one verdict form that you'll use alone to
6 render the verdict.

7 You will take this form to the jury room, and
8 when you have reached unanimous agreement as to your
9 verdicts, you will have your foreperson write your
10 verdicts, date and sign the form, and then return with
11 your verdicts to the courtroom. You'll let Officer Spivey
12 know when you're finished.

13 If it becomes necessary during your
14 deliberations to communicate with the Court, me, you may
15 send a note, signed by your foreperson or by one or more
16 members of the jury through the bailiff, Mr. Spivey. No
17 member of the jury should ever attempt to communicate with
18 the Court by any means other than a signed writing, a
19 note, and the Court will never communicate with any member
20 of the jury concerning the evidence, your opinions, or the
21 deliberations other than in writing or orally here in open
22 court.

23 You will note from the oath about to be taken by
24 the bailiff that they too, as well as all other persons,
25 are forbidden to communicate in any way or any manner with

1 any member of the jury concerning the evidence, your
2 opinions, or the deliberations.

3 Bear in mind also that you are never to reveal
4 to any person, not even to me, how the jury stands,
5 numerically or otherwise, on the question of whether or
6 not the government has sustained its burden of proof until
7 you have reached your unanimous verdict.

8 So, in other words, let's say you have a
9 question and you write a note, signed by the foreperson,
10 to me. Do not write in the note, well, we are divided
11 nine to three or six to six. Don't do that. The only
12 time that we talk about what your numbers are is at the
13 end when you're unanimous and you return with your final
14 verdict. Does everybody understand that? That's very
15 important for you to be mindful of that.

16 All right. I'm just going to go through the
17 verdict form. I'm going to go through this again after
18 you hear closing argument. Because it's so important,
19 though, I want to make sure you understand what you're
20 supposed to do here. So you're going to go count by
21 count. Okay. You'll start with Count One. All right.
22 And you'll decide whether or not the government has proved
23 the defendant's guilt beyond a reasonable doubt under the
24 instructions that I gave you as to this count.

25 You'll then indicate we, the jury, unanimously

1 find the defendant, Chikosi Legins -- and then you'll
2 write either "guilty" or "not guilty" as charged in
3 Count One of the indictment.

4 If, and only if, you find him guilty of
5 Count One, then you go to the additional steps. So if you
6 find him not guilty, you don't do the additional steps.
7 Okay. But if you find him guilty of Count One, you then
8 go to 1a, did the defendant's conduct include attempted
9 sexual -- attempted aggravated sexual abuse? And then
10 you'll answer yes or no as to whether they proved it
11 beyond a reasonable doubt.

12 Then you'll go to 1b, did the defendant's
13 conduct included aggravated sexual abuse? Again, whether
14 they proved it beyond a reasonable doubt, you'll just
15 check either yes or no.

16 Did the defendant's conduct result in bodily
17 injury? Again, you'll check yes or no depending on
18 whether they proved it beyond a reasonable doubt.

19 As to Count Two, then, you'll decide aggravated
20 sexual abuse, whether the government proved it beyond a
21 reasonable doubt. And then you'll indicate, we, the jury,
22 unanimously find the defendant, Chikosi Legins -- and then
23 you'll write in there either "guilty" or "not guilty" as
24 charged in Count Two of the indictment.

25 Similarly, for Count Three, sexual abuse of a

ward; and Count Four, the same offense, you'll write in "not guilty" or "guilty" depending on whether they have proved those counts beyond a reasonable doubt.

Now, as to Count Five, which is the false statement allegation, you'll write in, first of all, whether or not you find him guilty or not guilty beyond a reasonable doubt as to Count Five. If, and only if, you find him guilty of Count Five, then you go to the second part, which is which statement, or both, you have all agreed that the government has proved that he made a false statement beyond a reasonable doubt, and you'll check the appropriate box. If you -- you could check both. If you find him guilty, you have to at least find one of those, right. If you find him not guilty, you don't get to this part. But if you find him guilty, you can check one or both depending on whether or not you find the government has proved the statement to be false beyond a reasonable doubt.

Once you've concluded and you're unanimous -- I can't stress that enough -- then the foreperson will sign their name and date it, and you'll indicate to Officer Spivey that you're ready to return to court, and then we'll receive your verdict. That's kind of rules of the road. I'm going to go over this one more time after you hear closing arguments.

* * * * *

REPORTER'S CERTIFICATE

I, Tracy J. Stroh, OCR, RPR, Notary Public in and for the Commonwealth of Virginia at large, and whose commission expires September 30, 2023, Notary Registration Number 7108255, do hereby certify that the pages contained herein accurately reflect the stenographic notes taken by me, to the best of my ability, in the above-styled action.

Given under my hand this 21st day of September 2020.

/s/

Tracy J. Stroh, RPR